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Marianne Abely, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6040

Dear Ms. Abely:

We represent Fourth Lenox Terrace Associates ("Fourth Lenox") in connection with the above-referenced matter. Pursuant to your discussion with Mary Streett, Esq., we write in response to Matthew Petersen's March 5, 2010 letter stating that the Federal Election Commission ("the Commission") found that there is "reason to believe" that Fourth Lenox violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") and to provide the Commission information which we believe is relevant to the Commission's consideration of this matter.

In sum, the Factual and Legal Analysis ("Analysis") supporting the Commission's conclusion states that the available information – which appears to be information gleaned entirely from a New York Times article and our submissions dated November 14, 2008 and December 23, 2008 – indicates that, in leasing apartment 10U to Congressman Charles B. Rangel, Fourth Lenox may have provided a discounted rate to Rangel for Congress ("RFC") and the National Leadership PAC ("NLP") "because the lease may not have been on the same terms and conditions that Fourth Lenox offered

similarly situated non-political tenants." Factual and Legal Analysis at 12; see id. at 10. In support of this conclusion, the Analysis states that the lease for apartment 10U stated that the apartment "shall be used for living purposes only" and the apartment could not be sublet without advance written consent of the landlord – covenants with which, according to the Analysis, Representative Rangel did not comply. See Factual and Legal Analysis at 10. As set forth below, we believe the conclusion rendered in the Analysis and facts set forth in the New York Times article to be erroneous. It has been our experience that regulators rarely base findings upon often inaccurate, biased or incomplete hearsay statements contained in newspapers.

Applicable New York Rent Stabilization Law

New York rent stabilization laws are a set of tenant protection measures designed to protect tenants' rights to continued occupancy of their apartments at the end of each lease term at limited rental rate increases prescribed by the rent stabilization laws.[1] See 9 NYCRR § 2524.4.1. While the rent stabilization laws are tenant protection measures, they do not place affirmative duties on landlords other than to provide those protections to their rent stabilized tenants.

Under the rent stabilization law, rent stabilized apartments remain rent stabilized unless and until they are deregulated. See N.Y. Unconsol. Law §§ 26-504.1 & 504.2 (McKinney 2008). Tenants who want to insure continuation of their automatic lease renewal rights under the rent stabilization laws must satisfy two requirements: (1) tenants must be individuals, and (2) tenants must use the apartment as a primary residence. 9 NYCRR §§ 2520.6(u) & 2524.4(c). Nevertheless, under the rent stabilization laws, a tenant's failure to comply with these requirements does not mean that the apartment automatically becomes destabilized. See id. Nor does the rent stabilization law require a landlord to seek the eviction of a non-complying tenant from the rent stabilized apartment. See 9 NYCRR § 2544.2. Instead, the landlord is under no affirmative obligation not to renew a lease for a non-compliant tenant, and may renew the lease without violating the law if it determines that it is in its best interests to do so. Id. The law simply gives the landlord the option of not renewing the tenant's lease at the end of the lease term if the landlord can establish that the tenant does not meet the two above criteria. Id. If the landlord chooses not to renew such a tenant's lease, the landlord must enter into a new rent stabilized lease with the subsequent tenant. In short, the tenant's failure to comply with these two requirements only affects the tenant's right to demand a renewal of the lease, and imposes no positive responsibilities upon the landlord to refuse to renew a lease. Id. Accordingly, the rent stabilization laws do not prevent a landlord

[1] The term "rent stabilized" simply means that any increase in rent for a stabilized apartment must be in accordance with the Rent Guidelines Board's annual orders. N.Y. Unconsol. Law § 26-510 (McKinney 2008).

from renting a rent stabilized apartment to a non-complying tenant, such as a corporate entity or a political campaign.

Analysis

As an initial matter, we note that while Fourth Lenox owns 40 West 135th Street – the building in question – it does not manage the building. Hampton Management Company ("Hampton"), which has its offices at another location, is the managing agent of the building (not the Olnick Organization ("Olnick")).[2] As the managing agent of the building, Hampton is responsible for, among other things, leasing vacant apartments and renewing leases.[3] Management at Hampton had no actual knowledge that RFC and NLP sublet the apartment or were using apartment 10U as an office until at least June or July of 2008. While there may have been on-site Hampton employees who may have been aware of this information, it was not shared with management at Hampton or with any of the partners of Fourth Lenox. Even assuming that this knowledge was sufficient to put Fourth Lenox on notice, which we submit it is not, as set forth below, Fourth Lenox did not provide anything of value at less than the usual and normal charge and therefore did not make any in-kind contributions to RFC or NLP as a result of Representative Rangel's leasing apartment 10U. Indeed, Representative Rangel was, at all times, charged the maximum amount of rent allowable under the law for apartment 10U.

In our previous submissions, we noted that apartment 10U was a rent stabilized apartment throughout the time that it was leased by Representative Rangel.[4] As a result of the apartment's designation, Hampton was limited in how much rent it could charge at the beginning of a tenant's occupancy of the apartment and how much it could raise the rent of the apartment for a lease renewal. As with every other rent stabilized apartment in the building, Hampton intended to (and did) follow its practice of leasing the apartment at the maximum amount of rent permitted under New York rent stabilization law.[5] The fact that Representative Rangel ultimately leased this apartment did not change the practice.

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[2] The Analysis states that Olnick is Fourth Lenox's agent. This is incorrect. While there are some overlapping non-controlling/minority family interests in Olnick, Fourth Lenox and Hampton, Olnick, a developer of residential, commercial and hotel properties in New York, neither owns nor controls, nor is the agent of Fourth Lenox. Thus, any references to Olnick's "overzealous tactics" to evict tenants is irrelevant as to whether there is reason to believe Fourth Lenox violated any provisions of the Act.

[3] As part of its duties in managing 40 West 135th Street, Hampton has several lower level/non-management employees who work on site. The management of Hampton works at its main office in mid-town Manhattan, over 75 blocks away from 135th Street.

[4] Rent stabilization attaches s with the apartments and not the tenants of the apartments.

[5] There are occasions when Hampton cannot find a tenant for an apartment at the maximum amount of rent permitted under rent stabilization law and is forced to rent the apartment at a lower rate then the

Prior to Representative Rangel's initial lease of apartment 10U in October 1996, the apartment, as with others at 40 West 135th Street, had been vacant for several months.[6] The last registered rent amount with DHCR for apartment 10U prior to Congressman Rangel renting the apartment was $416.57. Congressman Rangel leased the apartment for $498.87 per month.[7] This amounts to an increase in rent of almost 20% from the previous tenant. This increase is attributable to two sources. First, the rent was increased by the maximum amount permitted for a new tenant that year. The maximum increase at the time was 16% – 9% for the vacancy increase and 7% for the annual increase for a two year lease. See Ex. 4 to November 14, 2008 submission. Second, the remaining almost 4% increase charged for apartment 10U resulted from what we believe were improvements made to the apartment after the previous tenant vacated the apartment. Accordingly, Congressman Rangel was not charged anything less than what could be legally charged for the apartment under the rent stabilization laws. To the contrary, Congressman Rangel was charged the maximum legal rental rate under his lease. Likewise, as set forth in detail in our initial submission, the rent charged for apartment 10U always was increased by the maximum lawful amount in each of Congressman Rangel's renewal leases. In sum, Representative Rangel's rent for apartment 10U was never anything less than the maximum lawful rent. In light of this, neither Congressman Rangel, nor RFC and NLP received any discount or other benefit on rates charged for the rental of unit 10U and thus were treated "on the same terms and conditions that Fourth Lenox offered similarly situated non-political tenants."

While it appears that at some point after Representative Rangel signed the lease for apartment 10U, RFC and NLP started using the apartment as its offices, that fact in and of itself, does not mean that Hampton bestowed a benefit to Representative Rangel, or made an in-kind contribution to RFC or NLP. First, as previously mentioned, the management at Hampton, who is in charge of making leasing decisions, was not aware that RFC and NLP had sublet the apartment or were using the apartment as an office until June or July of 2008. Indeed, Hampton has no correspondence or other documentation regarding a "sublet" between Congressman Rangel and RFC and NLP. Nor did Hampton consent to such an arrangement. While it is true that at some point after Congressman Rangel leased apartment 10U, RFC and NLP began paying the rent for the apartment, these rent checks were not sent to or seen by Hampton. In accordance with the requirement of the mortgage agreement secured by the building, the rent checks were sent directly to a lock box where they were then deposited into a bank account. Thus, the fact that RFC and NLP paid the rent for apartment 10U did not confer

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maximum. This was not the case with Representative Rangel's leasing of apartment 10U which was leased at the maximum permissible rent.

6 There was a vacancy rate at all times in the buildings comprising Lenox Terrace.

7 While the initial lease calculated the rent at $500.19, the rent was actually $498.87. Accordingly, the rent for the year 2000 lease renewal is based on $498.87.

knowledge to the management of Hampton (or Fourth Lenox) that RFC and NLP were using the apartment as an office. What Hampton did know, however, was that it was always Representative Rangel, and not RFC and NLP, who renewed the lease for apartment 10U every two years. Since management at Hampton (and Fourth Lenox) had no knowledge of the status of the apartment at any time when they leased the apartment or renewed the lease, it could not have attempted (or have the intent) to influence a federal election or make an in-kind contribution to RFC or NLP.

In addition, based upon the rent stabilization as outlined above, Hampton had the right to rent the apartment to whomever it chose, whether or not the tenant was (1) an individual, and (2) used the apartment as a primary residence. Representative Rangel's failure to comply with these two requirements only affected his right to demand a renewal of the lease, and imposed no positive responsibilities upon Hampton to refuse to renew his lease. Id. Accordingly, the rent stabilization laws did not prevent Hampton from renting apartment 10U to Representative Rangel as a non-complying tenant.

Finally, as mentioned above, prior to Representative Rangel's initial lease of apartment 10U in October 1996, the apartment had been vacant for several months. Since the primary goal of all lessors, including Hampton, is to fill apartments in their buildings and earn money from rentals, stable tenants who pay timely rents are desirable. As such, and in light of the fact that there had been many non-payment eviction cases over the years at Lenox Terrace, Representative Rangel was viewed as a good prospective tenant when apartment 10U was rented to him. Even if the management of Hampton had been aware that the RFC and NLP were to occupy the apartment, which they were not, since apartment 10U was rent stabilized (and could not have been de-stabilized), there was no economic incentive for Hampton to reject the tenancy. Had it refused to rent to Representative Rangel, it would have suffered the financial consequences of having the apartment remain vacant for an indeterminate period of time and then taken a risk of having a less responsible tenant lease the apartment. The decision of management to preserve its economic self-interest in compliance with the law cannot be deemed a violation even if it saved the Congressman money in the same manner he, or anyone else, was saved money by renting a rent stabilized apartment.

In sum, regardless of how Representative Rangel ultimately used apartment 10U, at all times, he was charged the maximum amount of rent allowable under New York rent stabilization law and thus was treated no differently than any other tenant who would have rented apartment 10U. Accordingly, there was no in-kind contribution to RFC or NLP.

We hope that the above clarifies our previous submissions and look forward to resolving this matter as expeditiously as possible. We are in receipt of the Commission's letter of March 25, 2010 and are working to gather the requested

information. In the interim, if you have any questions, please contact me at the above listed number.

Very truly yours,

Robert G. Morvillo

cc: Mary M. Streett, Esq.